

Headquarters U.S. Air Force

Integrity - Service - Excellence

Worldwide First Sergeants Conference



**Major General Thomas J.
Fiscus
The Judge Advocate General**

U.S. AIR FORCE

August 2003



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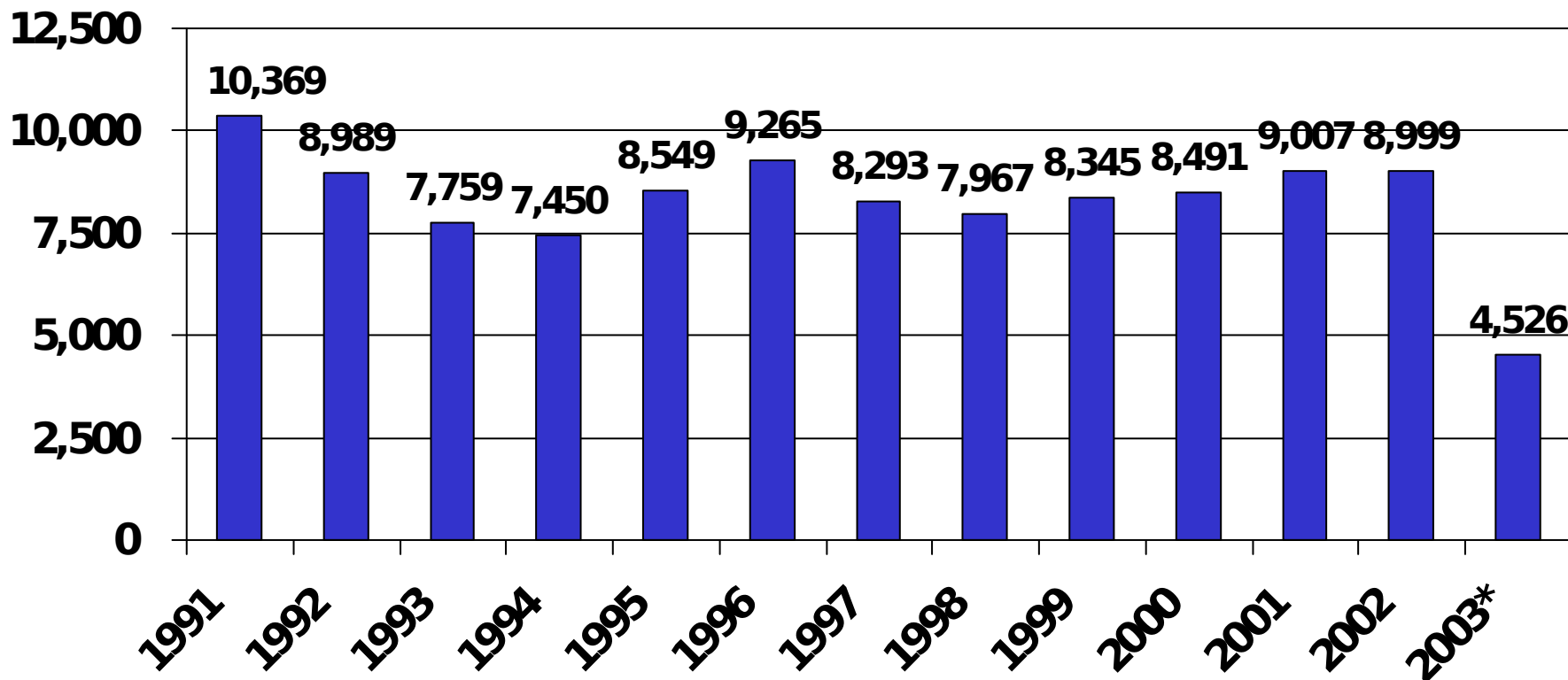
Overview

- **Rules of Engagement**
 - **This is your time**
- **A little history**
- **The Numbers**
- **The Military Justice Environment**
- **The Philosophy of Discipline - what we tell commanders**
- **Quality of Life Programs**



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Article 15 Actions



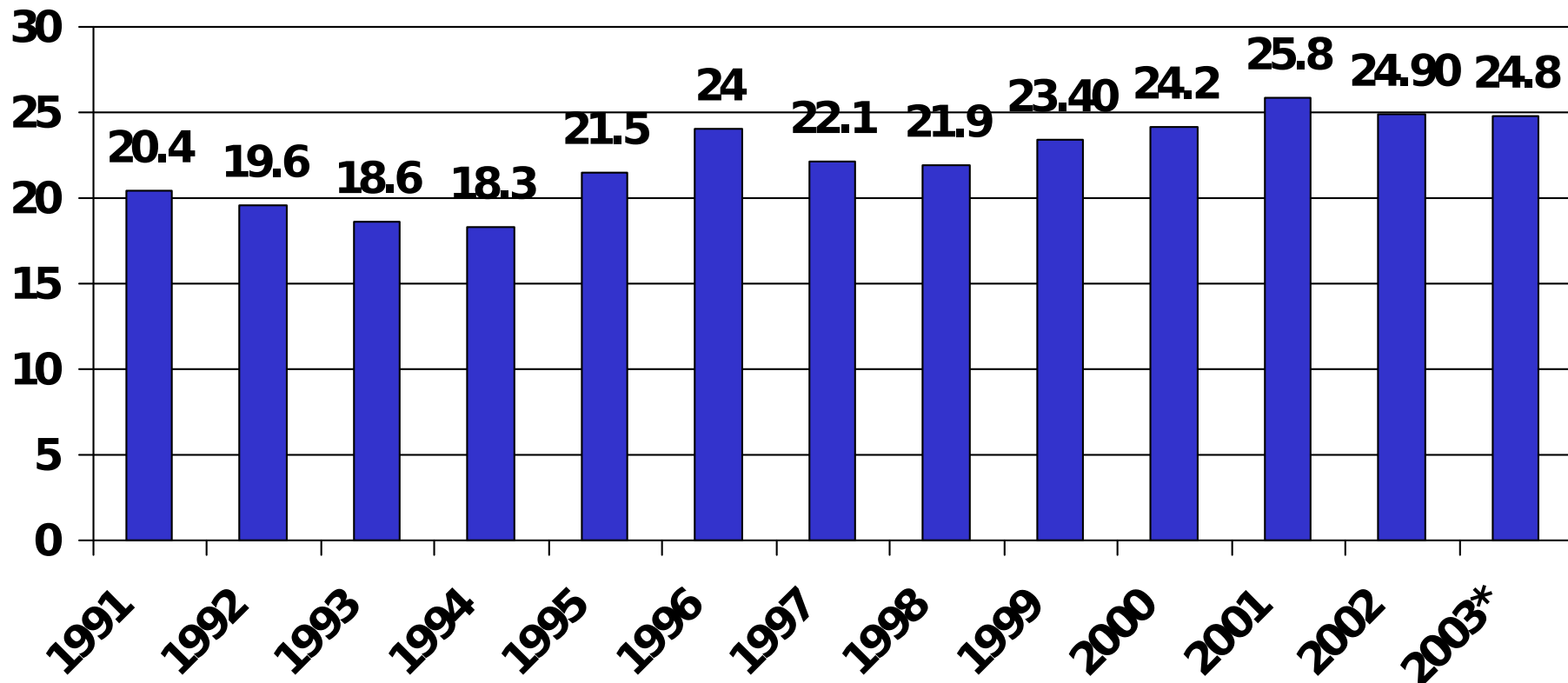
**As of 30 Jun*



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Article 15 Actions

Rate Per Thousand

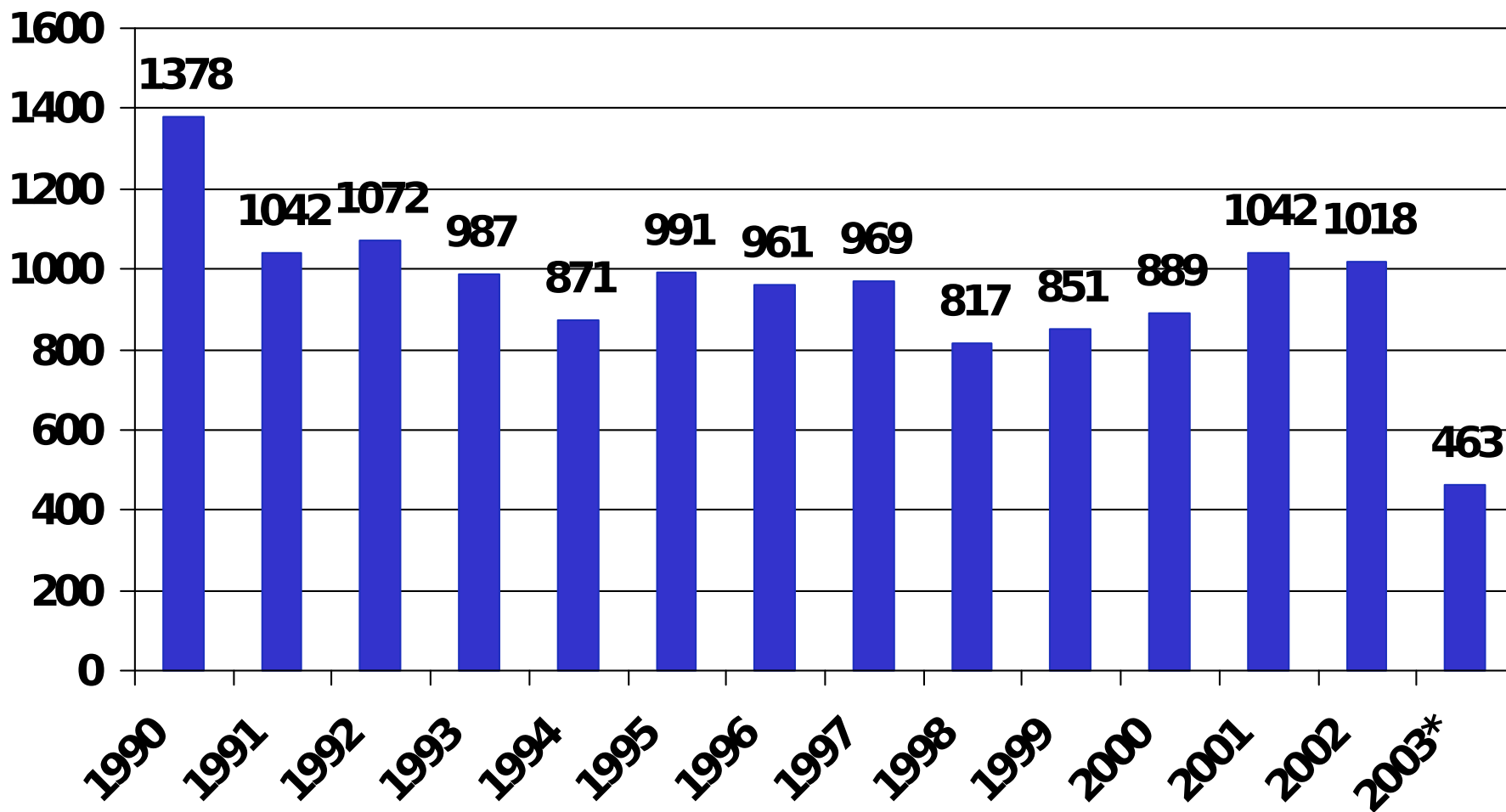


**Projected as of 30 Jun*



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Courts-Martial



**As of 30 Jun*

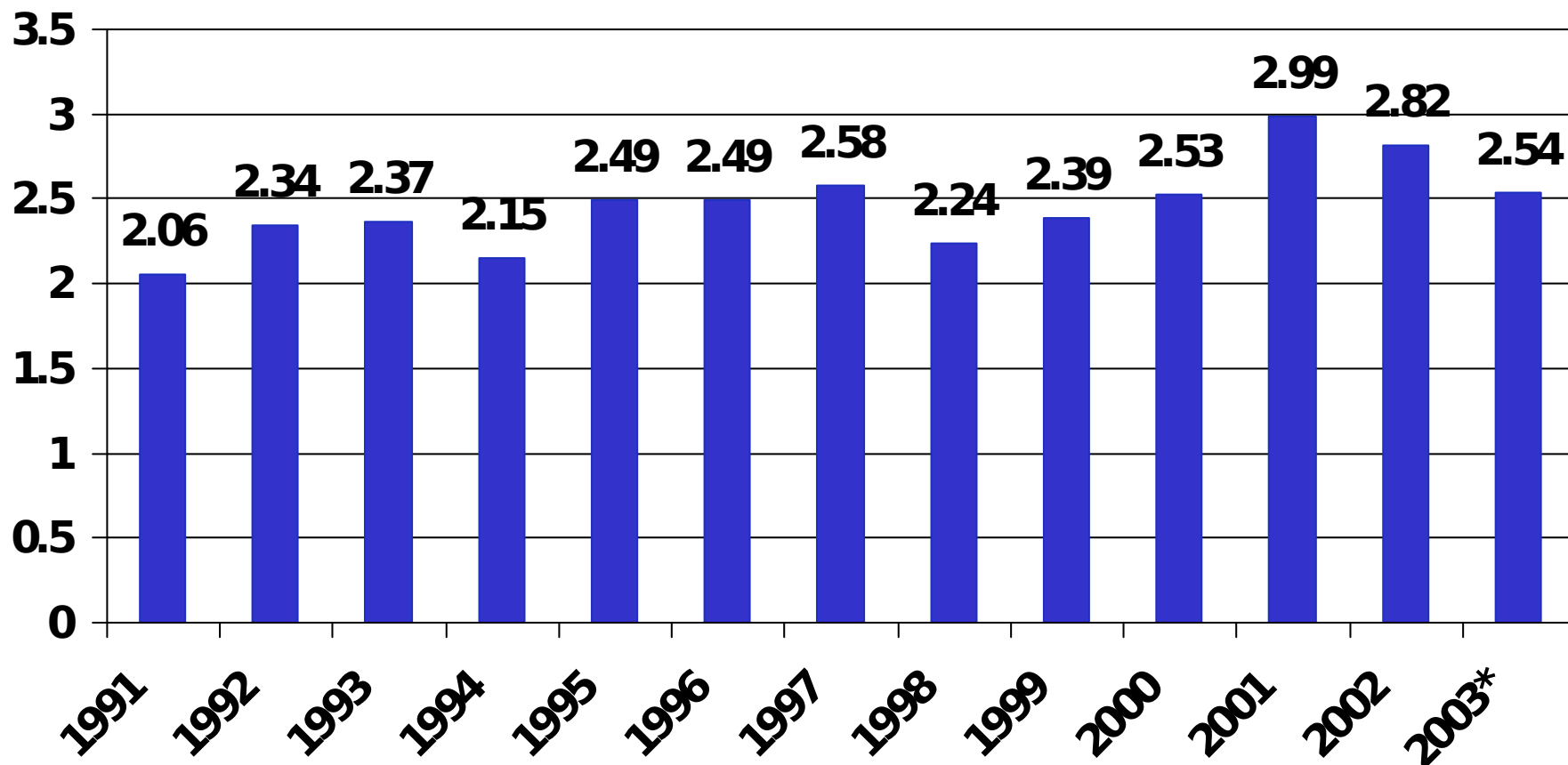
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Courts-Martial

Rate Per Thousand

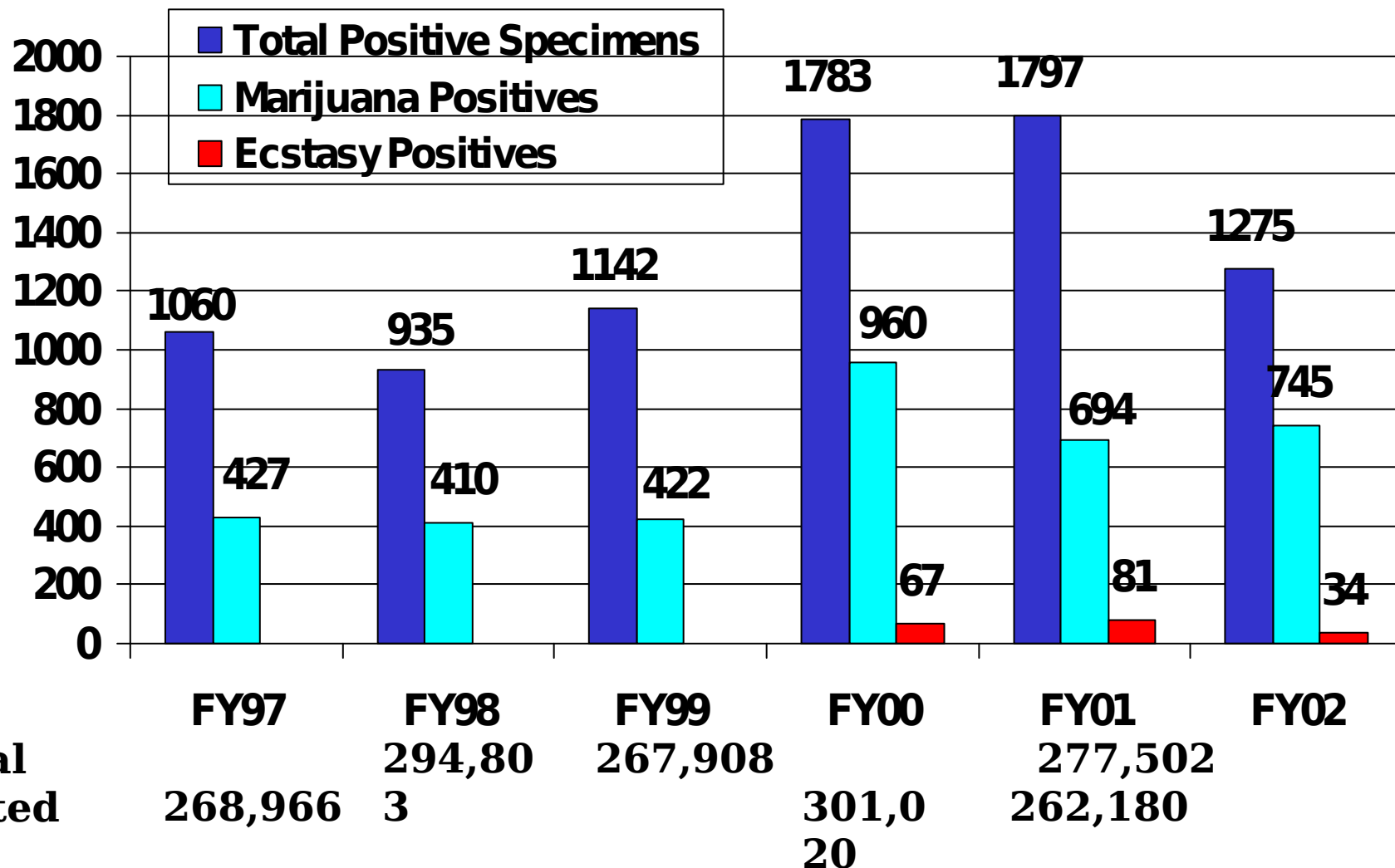


**Projected as of 30 Jun*



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Urinalysis



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Urinalysis Challenges

- **Assuring randomness**
- **Ensuring urinalysis program is:**
 - **Robust**
 - **Fair**
 - **Efficient**
- **Enhancing testing for ecstasy and other “club drugs”**
 - **Very short life in body**



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The Military Justice Environment

- **The military justice system - stable yet flexible**
 - **Its core elements have remained constant while staying current (if not ahead of) contemporary legal principles**
 - **Major enhancements in 1969 and 1984**
 - **Continuous reviews and updates**
 - **Potential Achilles heel - race**



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Military Justice Environment Many Interested Parties

- **The accused (plus family and friends)**
- **The victim(s) (plus family and friends)**
- **Front line supervisors and their superiors**
- **The commander**
- **Other members of the unit**
- **Legal office and the ADC**
- **The rest of the Air Force**
- **Civilian military leadership**
- **Congress**
- **Special interest groups**
- **The media**
- **The general public**
- **Host nations**



Military Justice Environment

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The Media - the Public's Portal

- **The media role**
 - **Pervasive, immediate, 24/7 news plus pundit shows, call-in talk shows, Early Bird, & CNN 48 times a day can exaggerate any event**
 - **Empowerment of the “little guy”**
 - **Role of the Internet and e-mail (speed and coverage)**
 - **Death or sex draw frantic attention**
 - **Death and sex draw even more attention**
 - **Media is often more interested in drama than in right vs. wrong or who wins**
 - **Courts-martial are great drama**



High Profile Cases Abound

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- Navy Tailhook
- Black Hawk shootdown
- Fairchild B-52 crash
- Spangdahlem F-15 crash
(Mueller/Campbell)
- CT-43 crash
(Commerce Sec'y Ron Brown)
- Khobar Towers bombing
- Army sexual harassment cases
- Lt Kelly Flinn
- Marine EA-6B ski cable cut
- Nellis HH-60 mid-air
- USS Greeneville
- Anthrax cases
- Tarnak Farms friendly fire
- USAFA sexual assaults



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Military Justice Environment Framing the Issue

***Those who first clearly frame the issue
can carry the day***

- **Kelly Flinn**
 - **Public relations firm takes credit for avoiding the court-martial by characterizing her as a young, vulnerable, woman who fell in love with a bad man**
 - **A great story, even if incomplete and incorrect**
 - **The Air Force didn't effectively rebut the story out of concern for accused's privacy**
- **The impact of the CSAF restating the issues**



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Military Justice Environment Framing the Issue - Today

- **Lessons learned:**

- The need for proactive media engagement and continued engagement**

- **Quick response to media and to defense allegations**

- **Open Article 32 Hearings**

- **Ready availability of expert spokespersons**

- **Draft charges carefully**

- **“Your Rationale in 25 Words or Less” Approach**



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Military Justice Environment Bottom Line

***Military people pay more attention to
misconduct and the responses to it
and...
so does everyone else***



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Military Justice Today First Step

*How Should
We React to
this Complex
Environment?*



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Military Justice Today ***First Step***

*How Should
We React to
this Complex
Environment?*

*First, understand the
philosophy of discipline*



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Quotable Quote

A former USAF Vice Chief of Staff said it best.....

If you have good order and discipline, everything else seems to fall into place.



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Discipline in Action



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The Human Misconduct Spectrum

THE OFFENSE

People who most likely would not commit an offense no matter what

The “impressionables”
People who are highly subject to the influence of their environment.....

People who are highly likely to commit an offense no matter what

I n t e g r i t

peers, superiors,
and
circumstances

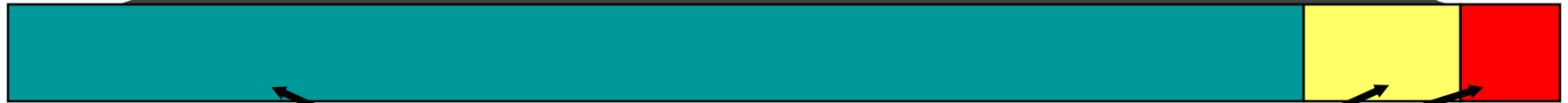
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The Human Misconduct Spectrum By Offense

MURDER



Relative percentages of the population

SPEEDING



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The Human Misconduct Spectrum Our Objectives

MISCONDUCT

"V"

**The oft-
overlooked!**

**Provide them a
safe
environment**

**Reinforce by
showing the
system works**

Deter, push towards the green

**Prevent,
Punish,
Separate or
Rehabilitate**

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Military Justice Today ***Second Step***

**In every case, do the
“right” thing for the
“right” reason**

**Whatever happens as a
consequence, happens**

***How do you decide what the
“right thing” is?***



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Disposition Options ***The Perspective***

**“We need more good old-
fashioned butt
chewings!”**

General John P. Jumper

**In other words, handle cases
at the lowest appropriate
level**



Inappropriate Factors

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- **Air Force standards too tough**
- **Should apply standards situationally**
- **Don't want to "hurt [offender's] record"**
- **First offense demands leniency - no matter what it was**
- **Avoid adverse publicity**
- **Expediency - just get rid of offender**
- **Loyalty demands leniency**
- **"Too hard" to address**
- **Others have done worse**
- **It was only a mistake**
- **"Circle the wagons" - it's one of our guys this time**



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The Tough Cases

- **Double standards - what about officers?**
- **Operations and Maintenance and Mishaps**
 - **Where a small mistake can have terrible results**
- **The “Running a Stop Sign” spectrum**
- **In our society, the results of an action or inaction can determine the forum**
 - **A court-martial is the forum where representatives of our community **decide how to dispose of** serious misconduct and/or serious results**
 - **It’s not the place where we just “punish the guilty”**



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Bottom Line

- **Air Force standards must be:**
 - **Uniformly known**
 - **Consistently applied**
 - **Nonselectively enforced**

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Is Our Forum Defensible?

Fairness Report Card

	Civ	MJ
Suspect Rights		➡
Disciplinary		➡
Options		➡
Pretrial		➡
Investigation		➡
Notif of Charges		➡
Pretrial Release	↔	↔
Legal	↔	↔
Representation	?	?
Trial Procedure		➡
Evidentiary Rules	?	?
Jury		➡
Witness Costs		➡
Verdict		

**By any objective
evaluation,
military justice
system is at
least as fair as
its civilian
counterpart**



JA Quality of Life Programs



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Legal Assistance

- **Available to all airmen and dependents**
- **Services**
 - **Advice on *all* types of legal issues; assistance in *most* areas**
 - **Preparation of documents (e.g., wills, POAs)**
 - **Tax program**
 - **Mobility processing**
 - **Some criminal matters referred to ADC**



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Preventive Law

- **Constant efforts to identify and address legal pitfalls**
 - **Briefings keep AF personnel up-to-date on important legal issues**
 - **Legal websites help disseminate information**
- **JA-1st Sgt partnership critical to preventing legal difficulties among airmen**

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**Your
Questions**



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